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the International Olympic Committee

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

The United States Olympic  
Committee and the International  
Olympic Committee,

Plaintiffs,

v.

Xclusive Leisure & Hospitality Ltd.;  
Beijingticketing.com; 2008-  
olympics.com;  
Beijingolympic2008tickets.com;  
Beijingolympictickets2008.com;  
Olympic-tickets.net;  
Olympicticketsbeijing2008.com;  
Does 1-10, inclusive,

Defendants.

Case No. C 08-03514 JSW

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' *EX PARTE* MOTION  
FOR LEAVE TO SERVE BY  
ALTERNATIVE MEANS**

Date: August 22, 2008  
Time: 9:00 a.m.  
Judge: Hon. Jeffrey S. White

Through this motion, Plaintiffs, the United States Olympic Committee and the International Olympic Committee, seek the right to serve Defendants by alternative service pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure. Rule 4(f)(3) permits service in a place not within any judicial district of the United States “by other means not prohibited by international agreement, as the court orders.”<sup>1</sup> Service of process under Rule 4(f)(3) is available “without first attempting service by other means” and is neither a “last resort” nor “extraordinary relief.” *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002) (allowing service by email on a foreign Internet business entity that structured its affairs so that it could be contacted only by email). In short, “Rule 4(f)(3) is an equal means of effecting service of process under the Federal Rules of Civil Procedure” and “the task of determining when the particularities and necessities of a given case require alternate service of process under Rule 4(f)(3)” is committed “to the sound discretion of the district court.” *Id.* at 1016. To petition for relief under Rule 4(f)(3), Plaintiffs need only demonstrate that the facts and circumstances necessitate the Court’s intervention. *Id.* As discussed herein, the facts and circumstances support the Court allowing Plaintiffs to serve Defendants via email.

Plaintiffs sent an email to eNom Inc. and VeriSign, Inc. seeking the identity of the owner of the domain names, olympic-tickets.net, beijingticketing.com, beijingolympic2008tickets.com, beijingolympictickets2008.com, olympicticketsbeijing2008.com, 2008-0lympics.com; and buy-olympic-tickets.co.uk. On August 5, 2008, eNom replied, sending the whois information they had on file purporting to identify the owner of the relevant domain names. *See* Exhibit A. The document provided that the owner of the domain names was XLH, Suite 700, 2415 East Camelback Road, Phoenix, AZ.

<sup>1</sup> The United Kingdom, the country where Defendants may be located, is a signatory to the Hague Convention. However, the actual addresses of Defendants are unknown. The Hague Convention does not apply in cases where the address of the foreign party to be served is unknown. 20 U.S.T. 361 (U.S.T.1969); *BP Products North America, Inc. v. Dagra*, 236 F.R.D. 270, 271 (E.D. Va. 2006). Accordingly, no international agreement prohibits the method of service requested herein.

1 Plaintiffs are aware that this is a nonexistent address. *See* Declaration of Kai  
 2 Lintumaa In Support of Plaintiffs' Application for Temporary Restraining Order  
 3 ("Lintumaa Dec."). On July 22, 2008 Plaintiffs' counsel attempted serving  
 4 Defendants with the Complaint and Plaintiffs' Ex Parte Application for Temporary  
 5 Restraining Order at the East Camelback Road address, but the papers were  
 6 returned as undeliverable to that address.

7 From information subsequently received in response to Plaintiffs' August 8,  
 8 2008 subpoenas, Plaintiffs learned the identity and email addresses of several  
 9 individuals behind the XLH fraud: Alan T. Scott, Terence Shepherd, Geert  
 10 VanMeel, Thomas Coleman, Lynne Matthews, and Mohammad Irfan. Declaration  
 11 of Carla Meninsky ("Meninsky Dec."), ¶¶ 2, 3, 6. These persons have been paying  
 12 for the domain names registered by XLH and for the webhosting services that  
 13 support the websites. Plaintiffs also learned of several potential physical addresses,  
 14 all of which are in the United Kingdom.<sup>2</sup> Plaintiffs have not had time to verify any  
 15 of the address information of the individuals associated with the websites, however.

16 In the present case, Plaintiffs' only contact with Defendants has been via  
 17 email, originally through sales@beijingticketing.com and then through  
 18 bulkregisterdomain@gmail.com and beijingticketing@googlemail.com, when  
 19 ServePath disabled the beijingticketing.com account on the morning of August 3,  
 20 2008.<sup>3</sup> Plaintiffs' counsel have – not surprisingly – received no response to their  
 21 emails. However, ServePath, whose servers are used to host the websites, has been  
 22 in regular communication with Mr. Irfan through email at  
 23 Mohammad.Irfan@gmail.com. Meninsky Dec., ¶ 4. Thus, the only known reliable  
 24

25 <sup>2</sup> Plaintiffs have obtained information from the subpoenas and other sources that XLH, aka  
 26 Xclusive Leisure & Hospitality Ltd., has a registered address of: c/o B and C Associates,  
 27 Trafalgar House, Grenville Place, Mill Hill, London, England NW7 3S and a trading  
 28 address of 202 Blackfriars Road, London SE1 8NJ. Meninsky Dec., ¶ 2. Plaintiffs have  
 learned, however, this is in fact an accommodation address or mail drop.

<sup>3</sup> ServePath independently disabled the beijingticketing.com website in response to  
 multiple phishing – email fraudulently soliciting bank account information – complaints.  
 Meninsky Dec., ¶ 5.

1 communication tool available to contact Defendants and serve them with process is  
 2 email. Accordingly, as the *Rio* court instructs, Plaintiffs respectfully suggest it is  
 3 appropriate to serve Defendants via email.

4 As the *Rio* court further instructs, even if the method of service is permitted  
 5 by Rule 4(f)(3), the method must comport with constitutional notions of due  
 6 process. *Rio*, 284 F.3d at 1016. To meet due process, the method must be  
 7 “reasonably calculated, under all circumstances, to apprise interested parties of the  
 8 pendency of the action and afford them an opportunity to present their objections.”  
 9 *Id.* (citation omitted). While Plaintiffs’ emails to Defendants at  
 10 bulkregisterdomain@gmail.com and beijingticketing@googlemail.com have  
 11 received no response, Plaintiffs have received successful delivery messages.  
 12 Meninsky Dec., ¶ 8. Both Enom, the website’s registrar, and ServePath,  
 13 Defendants’ web hosting provider, list Mohammad.Irfan@gmail.com as the billing  
 14 email contacts for Defendants. Meninsky Dec., ¶ 2, 6. Accordingly, serving  
 15 Defendants via email to all of these email addresses is reasonably calculated to  
 16 apprise them of the action and afford them the opportunity to object.

17 For the foregoing reasons, Plaintiffs request that the Court authorize them to  
 18 serve Defendants via email at bulkregisterdomain@gmail.com,  
 19 beijingticketing@googlemail.com, and Mohammad.Irfan@gmail.com. Plaintiffs  
 20 have shown that email is the only reliable method of communication and service of  
 21 process. Plaintiffs also have shown that serving process via email is reasonably  
 22 calculated to apprise Defendants of the pending litigation.

23 Dated: August 19, 2008

24 **O’MELVENY & MYERS, LLP**

25 By: /s/ Diana M. Torres

26 Attorneys for Plaintiffs  
 27 The United States Olympic Committee and  
 28 the International Olympic Committee